

Banking and Finance

Legislation

It is practical that the current banking law system has firmly been set up since 12 December 1997 when the two basic laws, the Law on State Bank of Vietnam and the Law on Credit Institutions, in substitution of the former Ordinances, all of 23 May 1990, have been introduced, which were amended and supplemented on 17 June 2003 and 1 October 2004 respectively. These Laws have been replaced by new ones adopted on 16 June 2010 and effective since 1 January 2011.

Banking System

The local banking sector has two tiers. The first tier is SBV being responsible for conducting monetary policy; inspection, supervision and State management on monetary, banking and foreign exchange activities; and the function of the central bank on the issuance of currency, bank of credit institutions, and provision of monetary services to the Government. The second tier includes commercial banks, cooperative banks, policy banks, people's credit funds, micro-finance institutions, financial leasing companies and insurance companies. This Section focuses only on the commercial banks which consist of State-owned commercial banks, joint stock commercial banks, joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, and foreign bank ROs.

Amongst all, foreign banks wishing to establish a presence in Vietnam has a choice of the last four types, i.e. wholly foreign-owned commercial banks, joint venture commercial banks, foreign bank branches and foreign bank ROs. Joint venture commercial bank is established with capital contributed by Vietnamese bank(s) and foreign bank(s) on the basis of a joint venture contract in the form of a limited liability company with two members or more; and wholly foreign-owned commercial bank is established with 100% charter capital owned by foreigners, which must have at least a foreign bank owning more than 50% of charter capital (the parent bank) in the form of a limited liability company with two members or more. Management organization structure of wholly foreign-owned commercial banks and joint venture

commercial banks includes: the Board of Management, Supervisory Board, General Director and the assisting apparatus.

All the application procedures and files related to the issuance of License for establishment and operation to wholly foreign-owned commercial banks and joint venture commercial banks, License for opening a Branch to a foreign bank branch, License for opening a foreign bank RO must comply with Law on Credit Institutions and its guiding documents.

In addition to the general conditions applicable to domestic banks, the joint venture commercial banks, wholly foreign-owned commercial banks, foreign bank branches, foreign bank ROs are required to meet specific conditions separately applicable to each type of these organizations in order to be licensed. After being licensed, wholly foreign-owned commercial banks, joint venture commercial banks and foreign bank branches must conduct business registration procedures under the provisions of the LI and LE, as described in [Section 5](#) of this document; foreign bank ROs will register their activities as prescribed by law; and all of them have to publish information on the SBV's media and on a printed daily newspaper in 3 consecutive issues or Vietnamese electronic newspaper for at least 30 days prior to the intended date of operation commencement.

Subject to specific licenses issued by the SBV, joint venture commercial banks and wholly foreign-owned commercial banks can offer a wide range of banking services and other services in Vietnam. The local partner to a joint venture commercial bank must be an existing commercial bank. The minimum legal capital level for joint venture commercial banks and wholly foreign-owned commercial banks is VND3,000 billion, equal to around US\$150 million (effective 2010).

Foreign bank branches are entitled to provide the permitted banking services in Vietnam as specified in the license of that branch and the laws; excluding capital contribution, purchase of shares/ portion of capital contribution, and activities which parent banks are not allowed to perform in countries where they are headquartered. The minimum legal capital level for a branch is US\$15 million. Like foreign economic organizations' ROs which are described in [Section](#)

[6](#) above, foreign credit institutions and other foreign organizations conducting banking activities may establish only one RO in each province or centrally-run city. Foreign bank ROs are only allowed to perform the following activities according to the contents of the licenses granted by the SBV: (i) functions of a liaison office, (ii) market studies, (iii) promotion of investment projects of parent banks in Vietnam, (iv) promotion and monitoring of the implementation of the contracts and agreements signed between the parent banks with Vietnamese banks and enterprises, and projects financed by the foreign bank in Vietnam, and (v) other activities consistent with Vietnamese laws.

Generally, joint venture commercial banks, wholly foreign-invested commercial banks, and foreign bank branches are subject to the same taxes applicable to other businesses herein, which are well described in [Section 16](#) below.

Foreign Exchange and Transfer

The State management on this matter is shared amongst several State agencies. Amongst all, the Government charges with overall policy on foreign exchange management, based on the recommendation submitted to by MPI. MOF is responsible for making plans for implementing such overall policy, and SBV is liable for the day-to-day management and supervision of MOF's plans.

(i) Bank Accounts

Under the prevailing regulations, foreign-invested enterprises and foreign investors can open bank accounts with banks licensed and operating in Vietnam. All the receipts and expenditures including capital contributions, in principle, must be made through such bank accounts.

Subject to the using purposes, bank accounts which a foreign-invested enterprise or foreign investor can open comprise the following:

(a) Foreign investor's payment account in Vietnamese Dong or

foreign currency at a credit institution licensed to operate in Vietnam in order to transfer investment capital meeting lawful expenses during the stage of investment preparation in Vietnam according to written agreements among relevant parties; transfer investment capital abroad in case of falling to obtain an IRC or discontinues the implementation of investment project in Vietnam; conduct transactions on purchase of foreign currency, transfer of investment capital and lawful revenues abroad in the event the foreign-invested enterprise has to close its direct investment account due to its dissolution or operational termination, or assignment of investment capital changing the initial legal status of the FIE. Payment account in foreign currency may be foreign investor's account for borrowing and repaying foreign loans;

(b) (Direct or indirect) investment accounts in Vietnamese Dong or foreign currency selected by the FIE, foreign investor conducting capital contribution to, purchase of shares/portion of capital contribution or participating in PPP or BCC contract. In principle, all the revenues and expenses related to investment activities, including capital contributions, must be made through this account. Direct investment account may be also the FIE's account for borrowing and repaying foreign loans. In case where borrowing currency of a foreign loan does not correspond to that used by the FIE to open direct investment account, the FIE is permitted to open another direct investment account in the borrowing currency at the licensed bank where the 1st direct investment account is opened to implement the revenue and expenditure transactions relating to legitimate foreign loans and those relating to investment activities.

(c) deposit bank account, and

(d) off-shore foreign currency bank account, which includes:

- Account of the FIE or foreign investor to implement money remittance transactions relating to foreign loans (capital withdrawal, repayment of the principal, payment of interest) according to agreements with foreign lenders. Each of foreign loans is only remitted through 1 (one) bank providing bank account service. The borrower may use 1 (one) bank account for 1 (one) or more foreign loan(s).
- Account of the FIE to satisfy conditions for licensing the establishment of operations of its branches and ROs as

prescribed by the laws of foreign countries; to serve operations of its overseas branches and ROs; to carry out its commitments under the PPP contract with foreign party.

Practically, not every FIE is entitled to open off-shore foreign currency bank account because this requires to meet several criteria and be subject to a license from SBV.

(ii) Foreign Exchange Balancing

The State does not require investors to balance their foreign currency from exports to meet demand for imports. Based on socio – economic development orientations, foreign exchange control policies and the ability of foreign currency balance in each period, the Prime Minister shall decide to guarantee the satisfaction of demands for foreign currency of investment projects subject to investment policy decision of the National Assembly and Prime Minister as well as projects on investment in important infrastructure development. This assurance shall be extended for the entire duration of those projects.

When implementing the revenue and expenditure transactions relating to investment activities in Vietnam of FIEs and foreign investors, licensed credit institutions are responsible for selling foreign currencies to foreign investors to be transferred abroad on the basis of foreign currency balance of their organization and in accordance with the provisions of law.

(iii) Cash Transactions

In principle, all payments and receipts in Vietnam must be made in Vietnamese dong, except for some particular circumstances as permitted by the prevailing laws and depending upon SBV's approvals, which include commercial banks and financial institutions, foreign exchange bureaus, etc. Foreign investors to BCCs and JVCs are permitted to withdraw cash in foreign currency from bank accounts for paying salary and other allowances to their expatriates, or paying travel allowance to local employees for work-related overseas trips. To keep an international balance, the Government actively seeks to channel foreign currency inflows whilst strictly

monitoring the outflows. There appears no restriction upon inward remittances, which however must be either converted into Vietnamese dong or deposited into a foreign currency bank account. With respect to outward remittances, they are allowable to some special circumstances which include:

- (a) Payment for imported goods and services;
- (b) Abroad remittance by foreign investors, of: invested and reinvested capital, earning profits from undertakings in Vietnam, principals and interests of off-shore loans and credits, and other legal benefits;
- (c) Payment for travel allowances to employees traveling abroad, payments of salary to the executives of foreign capital enterprises and Vietnamese employees working in a foreign country; and
- (d) Abroad remittance of salaries and other legal incomes of foreigners.

To limit cash transactions, prevailing Vietnamese laws require invoices worth VND20 million or more to have a certificate of non-cash payment for goods and services purchased (including those imported) of which the value is VND20 million or more, except for the cases where value of goods or services imported each time worth less than VND20 million; goods and services purchased each time worth less than VND20 million according to invoices at current prices inclusive of value-added tax and the cases where businesses imported goods which are gifts or donated things of organizations and individuals abroad, in order that the costs of purchase of goods and services according to the invoices will be considered as reasonable costs for calculation of corporate income tax.

(iv) Exchange Rates

Any conversion will be based on the exchange rates of the authorized bank affecting the conversion, which will be referred to the rates announced by SBV at the time of transaction.

Capital and Financial Market

The efforts made by the Government and State Securities

Commission ("SSC") has been responded by the first opening of the Securities Transaction Center ("STC") in HCMC in 2000 (now called Ho Chi Minh City Stocks Exchange or HOSE), and the smaller one in 2004, in Hanoi, called Hanoi Securities Trading Center or HASTC (now called Hanoi Stocks Exchange or HNX). For more simplified procedures for listing by enterprises and more efficient management by State agencies, the Government is considering a project on combining these two stock exchanges into one in the near future.

To date, 80 among over 100 securities companies licensed by SSC are still active after 4 years of restructure. These companies provide a full range of services relating to securities business. They all have either head offices or branch/ liaison offices in Hanoi or HCMC. Two kinds of goods are well available for sale in the securities market. They are stocks listed by around 1,853 enterprises, in which many are enterprises equitized from the SOEs, and bonds issued by the Government and banks.

Applying for the registration of securities trading code at Vietnam Securities Depository Center ("VSD"), opening the securities trading account with a securities company in Vietnam, opening an indirect investment account with a licensed bank in Vietnam, and opening the securities depository account with a commercial bank or securities company granted by the SSC with depository activity registration certificate and registered as member of VSD are compulsory with respect to foreign individuals and organizations who wish to buy listed securities in the Vietnamese securities market, while the simpler requirements are made to a purchase of unlisted securities by foreign individuals and organizations in the Vietnamese securities market. With respect to listed stocks, foreign investors can hold up to 100% of the total of stocks in circulation of an issuer, except for some special cases such as investments in specific industries (e.g. banks) or in public companies operating with business lines where investment is conditional applicable to foreign investors but there is no specific regulations on foreign ownership (up to 49%) or the charter of a public or listed company limits foreign ownership and the

SSC has been reported thereon. With respect to listed bonds, foreign individuals and organizations can hold up to 100% of the total of bonds in circulation of an issuer, of which a private individual can hold up to 5% and an organization can hold up to 10%. With respect to unlisted stocks, foreign ownership limits are different (which in theory may go up to 100%), varying from business sector to business sector, and in accordance with the Vietnam's commitments to the WTO, other international treaties to which Vietnam is a party, and the relevant specific provisions of domestic laws. If companies operate with multiple business lines subject to different rules on foreign ownership ratio, the foreign ownership ratio shall not exceed the lowest of foreign ownership ratios applicable to these business lines (which are being conducted by the company), unless otherwise provided for by an international treaty.

Taxation

Legislation

The backbone of the taxation system is set up by:

(i) the Law on Tax Administration 2006, as amended and supplemented in 2012, 2014 and 2016, which provide general regulations on:

- Tax registration, tax declaration, tax payment and fixing amounts of tax payable;
- Conduct of procedures for tax refund, tax exemption and tax reduction;
- Cancellation of outstanding tax payable and of fines;
- Management of information about tax payers;
- Tax checks and inspections;

- Compulsory enforcement of administrative decisions about tax;
- Dealing with breaches of the law on tax;
- Resolution of complaints and denunciations about tax; and

(ii) other tax laws, which detail taxable and non-taxable objects, basis for calculation of tax and tariffs, exemption from and reduction of tax, declaration and payment of tax, complaints and dealing with breaches for each specific kind of tax, etc. For instance, they include the Law on Corporate Income Tax adopted in 2008, as amended and supplemented in 2013 and 2014; the Law on Value-Added Tax, passed in 2008, as amended and supplemented in 2013, 2014 and 2016; the Law on Special Sales Tax adopted in 2008, as amended and supplemented in 2014 and 2016; the Law on Personal Income Tax passed in 2008, as amended and supplemented in 2012 and 2014; and the new Law on Export Tax and Import Tax adopted in 2016.

There are also hundreds of decrees, circulars and other regulations being issued by the Government, various ministries and agencies, from time to time, with a view to provide guidelines for the implementation of those laws.

Types of Taxes

According to the prevailing tax law system, at least, the following taxes should be aware of by foreign investors when doing business in Vietnam:

- (i) Corporate income tax;
- (ii) Value-added tax;
- (iii) Special sales taxes;
- (iv) Withholding tax;
- (v) Import/export tax;
- (vi) Non-agricultural land use tax;
- (vii) Royalties;
- (viii) Environmental protection tax;
- (ix) Foreign contractor tax;

(x) Personal income tax.

Details about each type of taxes are described herein.

Corporate Income Tax

The standard corporate income tax ("CIT") rate is now 20% as from 1 January 2016, decreased from 32%, 28%, 25% and 22% in the past, thanks to the issuance of the Law on CIT as amended and supplemented, and applicable to all legal entities; except for.

(i) The CIT rate for search, exploration and extraction activities of oil and gas and other rare natural resources in Vietnam from 32% to 50%. For the search, exploration and extraction of oil and gas, based on the location and conditions for extraction and mine reserve, the Prime Minister shall decide on the tax rate consistently with each project and business establishment at the request of the Minister of Finance;

(ii) For the platinum, gold, silver, tin, wolfram, antimony, precious stones, rare earth mines, the tax rate is 50%. Where the mines having an assigned area 70% or more in the areas with extremely difficult socio – economic conditions in the list of areas entitled to the preferential of CIT, these areas shall be subject to the CIT rate of 40%.

Below are the incentives including preferential tax rates, tax holiday and tax reductions:

(i) The tax rate of 10% is applicable to:

(a) Incomes of private enterprises from investment in education, vocational training, health, culture, sports, environment, and judicial expertise;

(b) Incomes of enterprises from the investments in social housing that are for sale, for lease, or for hire purchase according to Law on Residential Housing;

(c) Incomes from press agencies from printing newspapers, including advertisements on printed newspapers according to

the Law on Press; incomes of publishers from publishing according to the Law on Publishing;

(d) Incomes of enterprises from planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, multiplication, and cross-breeding plants and animals; from the production, extraction, and refinement of salt except for the production of salt; from investment in post-harvest preservation of agriculture products, aquaculture products, and food.

(ii) The tax rate of 10% for 15 years is applicable to:

(a) Incomes of enterprises from the execution of new projects of investment in localities facing extreme socio-economic difficulties, economic zones, and hi-tech zones;

(b) Incomes of enterprises from the execution of new projects of investment, including: scientific research and technology development; application of high technologies in the list of prioritized high technologies according to the Law on High Technologies; cultivation of high technologies, cultivation of hi-tech enterprises; high-risk investment in the development of high technologies in the list of prioritized high technologies according to the Law on High Technologies; investment in construction, operation of facilities for cultivation of high technologies, cultivation of high-tech enterprises; investment in development of water plants, power plants, water supply and drainage system; bridges, roads, railroads, airports, seaports, air terminals, train stations, and other particularly important infrastructural works decided by the Prime Minister; software production; manufacture of composite materials, light building materials, rare and valuable materials; production of renewable energy, clean energy, waste-to-energy process; development of biological technology; and environment protection;

(c) Incomes of hi-tech enterprises and agricultural enterprises that apply high technologies according to the Law

on High Technologies;

(d) Incomes of enterprises from the execution of new projects of investment in production (except for the production of articles subject to special excise duties and mineral extraction projects), which meet one of the two criteria as below:

- Any project of which the capital is at least VND6,000 billion that is released within 3 years from the day on which the IRC is issued, and the total revenue reaches at least VND10,000 billion within 3 years from the first year in which revenue is earned;
- Any project of which the capital is at least VND6,000 billion that is released within 3 years from the day on which the IRC is issued, and employ more than 3,000 workers within 3 years from the first year in which revenue is earned.

(iii) The tax rate of 15% is applicable to incomes of enterprises from farming, breeding, and agro-processing and fish processing that are not in localities facing socio-economic difficulties and localities facing extreme socio-economic difficulties.

(iv) The tax rate of 17% is applicable to incomes of people's credit funds and microfinance institutions.

(v) The tax rate of 17% for 10 years is applicable to:

(a) Incomes of enterprises from the execution of new projects of investment in localities facing socio-economic difficulties;

(b) Incomes of enterprises from the execution of new projects of investment, including: production of high-grade steel; production of energy-saving products; production of machinery and equipment serving agriculture, forestry, aquaculture, salt production; production of irrigation equipment; production and refinement of feed for livestock, poultry, and aquatic organism; development of traditional trades.

For special projects that need to attract a lot of investment

and high technologies, the period of preferential tax rates may be extended, but the extension shall not exceed 15 years.

The duration of application of preferential tax rates shall be counted consecutively from the first year in which revenue is earned. For hi-tech enterprises and agricultural enterprises applying high technologies, this duration shall be counted from the year when they are recognized as hi-tech enterprises or agricultural enterprises applying high technologies. For projects applying high technologies, this duration shall be counted from the year when they are granted certificates of projects applying high technologies.

In case where an enterprise has not derived taxable income during 3 years as per the generating year of first turnover, the tax holiday or reduction shall apply from the fourth year.

Value-Added Tax

Value-Added Tax ("VAT") is levied on the added value of most goods and services generated during the process from the production, circulation to consumption (With respect to some categories, they are also subject to Special Sales Tax, as described in Section 16.5 hereunder). According to the Amended Law on VAT 2008, there are three (instead of four as previously) VAT rates as follows:

(i) The tax rate of 0% is applicable to exported goods and services (i.e. that are consumed outside Vietnam or in free trade zones, or sold to foreign customers), international transportation, and to goods and services which are not subject to VAT and which are exported, except for the following:

(a) Technology transfers and intellectual property transfers to foreign countries;

(b) Services being reinsurance offshore, overseas securities investment;

(c) Assignment of capital, credit services;

- (d) Derivative financial services;
- (e) Outbound postal and telecommunications services (including those provided for the entities in free trade zones; prepaid cards sold overseas or in free trade zones);
- (f) Export products being exploited natural resources and mined minerals which have not yet been processed into other products, export products being commodities processed from natural resources and minerals with the total value of natural resources and minerals plus energy costs accounting for 51% or more of the cost of products;
- (g) Cigarettes, alcohol, and beers imported then exported; and
- (h) Goods and services provided to individuals in the non-tariff area who have not registered their business, except in other cases prescribed by the Prime Minister.

(ii) The tax rate of 5% is applicable to:

- (a) Clean water for manufacturing and for living purposes, except for bottled water and other soft drinks.
- (b) Ore used for production of fertilizers; pesticides and growth stimulants for animals and crops.
- (c) Services of digging and ploughing, and dredging canals, ditches, ponds and lakes for agricultural production; planting, raising and pest control of crops; semi-processing and preserving agricultural products.
- (d) Products of cultivation, husbandry and aquaculture which have not yet been processed, except for products of cultivation, husbandry, aquaculture, seafood and fisheries which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.
- (e) Semi-processed latex; semi-processed resin; and netting, cord and fibre used for weaving into fishing nets.
- (f) Fresh food produce; and forestry products which have not yet been processed except for wood, bamboo shoots and the products which have not yet been processed into other products

or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.

(g) Sugar; and by-products obtained in manufacture of sugar comprising sugar-cane dregs, bagasse and sugar dregs.

(h) Products made from jute, sedge, bamboo, rattan, coconut husks and shell, water hyacinth, and other handmade products produced by using agricultural raw materials; semi-processed cotton; and newsprint.

(i) Medical equipment and instruments; medical sanitary cotton and bandages; preventive and curative medicines; and pharmaceutical products and pharmaceutical materials which are the raw materials for producing preventive and curative medicines.

(j) Teaching and study aids used for teaching and studying including various types of models, drawings, blackboards, chalk, rulers, compasses and various types of specialized equipment and tools for teaching, research and scientific experiments.

(k) Cultural activities; exhibitions; physical training and sports activities; artistic performances; film production; and importation, distribution and screening of films.

(l) Children's games; books of all types, except for the books which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.

(m) Scientific and technological services as stipulated in the Law on Science and Technology.

(n) Selling/Leasing/Hire purchase social housing as specified in Law on Residential Housing.

(iii) The standard tax rate of 10% is applicable to other goods and services.

Special Sales Tax

Other than those subject to VAT, the following are being

subject to the Special Sales Tax with the rates ranging from 5% to 150%, which are:

- (i) Cigarettes, cigars and other products processed from tobacco and used to inhale, sniff, chew, smell or swallow;
- (ii) Spirits;
- (iii) Beer;
- (iv) Passenger vehicles of less than 24 seats, including vehicles for carrying both passengers and cargo with two or more rows of seats, designed with a fixed partition between the passenger and cargo compartments;
- (v) Two-wheel and three-wheel motor vehicles with cylinder capacity above 125 cm³;
- (vi) Aircraft and yachts;
- (vii) Various types of petrol;
- (viii) Air conditioners with a capacity of 90,000 BTU or less;
- (ix) Playing cards;
- (x) Votive paper;
- (xi) Business of operating dancehalls;
- (xii) Business of operating massage lounges and karaoke parlours;
- (xiii) Business of operating casinos and of operating electronic games with prizes including jackpot machines, slot machines and other similar types of machines;
- (xiv) Betting business;
- (xv) Golf business including selling membership cards and tickets to play golf; and
- (xvi) Business of operating lotteries.

These tax rates were applied from 1 January 2016. In addition, for some products, including cigarettes, cigars and other manufactured tobacco products; alcohols and beers, tax rates will be adjusted gradually to increase according to their own roadmaps.

Contrary to previous regulations providing that the goods and services subject to VAT were not subject to special sales tax, and vice versa according to the VAT Law, these two taxes may be concurrently applied on the same goods or service.

Withholding Tax

Since 1 January 2009, foreign capital projects and investors are free from paying the withholding tax. However, they are subject to corporate income tax or personal income tax as described in Sections 16.3 above and 16.9 hereunder as the case may be.

Export Tax, Import Tax

Vietnam is now adjusting its import and export tariffs in order to promote export and to fulfill the international commitments to cut down import duties and remove non-tariff barriers in line with ASEAN economic agreements, ASEAN – China economic agreements, ASEAN – Japan and Vietnam – Japan comprehensive economic partnership agreements, ASEAN – Korea economic agreement and Vietnam – Korea FTA, agreement establishing ASEAN – Australia – New Zealand free trade area, ASEAN – India economic agreements, Vietnam – EAEU FTA, Vietnam – EU FTA, Trans-Pacific Partnership Agreement, and agreements with other international trade organizations.

According to the LI and the Law on Import/Export Tax, foreign capital projects and foreign investors to PPP contracts or BCCs are exempted from duties imposed on the goods which they import to create their fixed assets, including:

- (i) Goods temporarily imported for re-export or temporarily exported for re-import to participate in fairs, exhibitions, product introduction; machinery, equipment and professional tools that are temporarily imported and re-exported, or temporarily exported and reimported in order to service work within a certain specified period.
- (ii) Goods which are moveable assets of foreign organizations or individuals brought in Vietnam or overseas to the extent prescribed by law.
- (iii) Goods which are imported in service of processing for a foreign party and then exported, or goods that are exported overseas in service of processing for a Vietnamese party and then re-imported pursuant to a processing contract.

(iv) Imports and exports in duty-free luggage quotas for people on exit or entry stipulated by the Government.

(v) Goods which are imported in order to form fixed assets of a project that is an encouraged investment or of a project funded by ODA, comprising:

(a) Equipment and machinery;

(b) Specialized means of transportation of a technological line and means of transportation used for transporting employees; means of transportation for transporting workers, including automobiles with 24 seats or more and means of waterways transportation;

(c) Components, details, separate sections, spare parts, fittings, moulds and accessories accompanying the equipment, machinery and specialized means of transportation;

(d) Raw materials and materials used to manufacture equipment and machinery in technological lines or to manufacture components, details, separate sections, spare parts, fittings, moulds and accessories accompanying the equipment and machinery;

(e) Construction materials which are not yet domestically produced; and

(f) Raw materials and other materials imported for performing BOT, BTO and BT projects.

The said tax exemptions will also apply to cases of expanding the scale of a project and of replacing and renewing technology.

(vi) Plant and animal seeds/ breeds, special agricultural products which are allowed to import to carry out agricultural, forestry and aquatic projects.

The said tax exemptions will also apply to cases of expanding the scale of a project and of replacing and renewing technology.

(vii) Goods which are equipment and facilities imported for the first time pursuant to the list stipulated by the Government for investment projects for hotels, offices, apartments for lease, residential housing, commercial centres, technical services, supermarkets, golf courses, tourist

resorts, sporting resorts, entertainment areas, medical diagnosis and treatment establishments, and entities that are training, cultural, financial, banking, insurance, auditing, and consultancy services establishments.

(viii) Goods imported in order to support petroleum operations, comprising:

(a) Equipment, machinery, and specialized means of transportation which are essential for petroleum operations; Means of transportation for transporting workers include cars of 24 seats or more and waterway means; Including components, details, spare parts, fittings, replacement parts, molds and accessories provided for synchronous assembly or synchronous use with equipment, machinery and specialized means of transportation; Means of transportation to pick up workers mentioned above;

(b) Materials which are essential for petroleum operations and which are not yet able to be produced domestically;

(c) Medical equipment and first aid medicines for use on drilling platforms and floating structures certified by the Ministry of Health ("MOH");

(d) Office equipment in service of petroleum operations;

(e) Goods temporarily imported for re-export in service of petroleum operations.

(ix) Goods which are imported for direct use in scientific research and development of technology, including machinery, equipment, accessories, materials and means of transportation which are not yet able to be produced domestically, and technology which is not yet able to be created domestically; and scientific books and data.

(x) Raw materials, materials and component parts imported for production of projects on the list of sectors where investment is specially encouraged or on the list of regions with special difficult socio-economic conditions will be exempted from import duty for a duration of 5 years from the commencement of

production.

(xi) Goods which are manufactured, processed, recycled or assembled in nontariff zones without using raw materials or component parts which are imported from abroad, upon import thereof into the domestic market; in the case where raw materials and component parts imported from abroad are used, upon import of goods into the domestic market, import duty must be paid on that part of the goods which is imported raw materials or component parts which form a constituent part of such goods.

(xii) Other cases pursuant to a decision of the Prime Minister.

Import taxes imposed on imported goods for the production of goods exported to foreign countries or exported into non-tariff area shall be refunded corresponding to the proportion of actually exported products, and exported goods determined as being entirely processed from imported raw materials and materials shall not be subject to export tax.

Non-agricultural Land Use Tax

The tax rate of 0.03% shall apply to non-agricultural production and business land (e.g. land being rivers, streams, canals, drains or creeks, and specialized use water surfaces; land on which headquarters and building works are constructed; etc.) and non-agricultural land used for business purpose.

Royalties

Organizations, which exploit natural resources including: metallic minerals; non-metallic minerals; crude oil; natural gas, coal gas; natural forest products, except animals; natural seafood, including marine animals and plants; natural water, including surface water and groundwater, excluding natural water used for agriculture, forestry, fisheries and salt production; swallow's nest; and other natural resources prescribed by the National Assembly's Standing Committee, must pay royalty at rates ranging from 1 to 40%.

Environmental Protection Tax

This is a type of indirect tax imposed on products and goods that, when used, is detrimental to the environment, except for goods transported in transit or transshipment; goods temporarily imported for re-export; goods directly exported by the production establishments or by export business establishments entrusted by the production establishments, except for cases where organizations purchase goods subject to environmental protection tax for export.

Taxable objects include: gasoline (except ethanol), lubricant oils and grease; coal; hydrogen-chlorofluorocarbon (HCFC) liquid; plastic bags made of HDPE, LDPE or LLDPE plastic films, except for pre-packaged goods and plastic bags meeting the environmentally friendly criteria prescribed by the Ministry of Natural Resources and Environment ("MONRE"); herbicides, insecticides, forest product preservatives, and warehouse disinfectant which are restricted from use. The National Assembly's Standing Committee shall consider and supplement other taxable object(s) to suit each period when deeming it necessary.

Organizations and individuals that produce and/or import taxable goods shall have to pay the environmental protection tax calculated in the quantity of taxable units multiplied by the absolute tax rate prescribed per unit of goods. In which the absolute tax rate applicable to gasoline and oil is VND300-4,000/liter, to lubricant grease is VND300-2,000/kg; to coal is VND10,000-50,000/ton; to HCFC liquid is VND1,000-5,000/kg; to taxable nylon bag is VND30,000-50,000/kg; and to herbicides, insecticides, forest product preservatives, and warehouse disinfectants which are restricted from use, is VND 1,000-3,000/kg.

16.6 Foreign Contractor Tax

Foreign contractors who conduct production and business activities in Vietnam, not under the LI, Petroleum Law and Law on Credit Institutions on the basis of signing contracts with Vietnamese legal entities, and sub-contractors who provide services to contractors in Vietnam, shall be liable for paying the same taxes and tax rates as applicable to the local enterprises. These taxes include VAT, CIT, import tax-export tax, PIT, and others if so required by the laws of Vietnam.

Foreign contractors and sub-contractors may choose one of three following ways to pay VAT and CIT:

(i) Declaration Method (paying VAT using credit-invoice method, paying CIT according to declared revenue and expense):

This is applicable to foreign contractor/ subcontractor who has a permanent establishment in Vietnam or the contractor/subcontractor is a resident of Vietnam; whose the period of business operation on Vietnam under the main contract or subcontract is 183 days or longer from the effective date of the contract; who applies Vietnam's accounting practice, has applied for tax registration and issued with a taxpayer ID number (TIN) by a tax authority. The tax payment will be done in the same way of local entities, at the VAT and CIT rates as described above.

(ii) Direct Method (paying VAT and CIT according to fixed rates):

This method is applicable when foreign contractors or sub-contractors fails to meet any of the requirements mentioned in section (i) above and the Vietnamese parties will be responsible to deduct and pay tax on their behalf. In order to facilitate the assessment and payment of VAT and CIT, these two types of taxes are consolidated on the basis of taxable revenues.

(a) Revenue subject to VAT is total revenue from provision of services and services attached to goods subject to VAT received by the foreign contractor or foreign sub-contractor inclusive of subtracting taxes payable and any costs (if any) paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor. VAT rates serving the calculation of VAT imposed on taxable revenues vary subject to business lines. VAT will be calculated by multiplying the taxable revenues with the respective VAT rates as described in the below table:

No.	<i>Business lines</i>	<i>VAT Rate as % of taxable revenues</i>
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1	Services, rental of machinery and equipment, insurance; construction, installation exclusive of raw materials, machinery and equipment	5
2	Production, transportation, services attached to goods; construction, installation inclusive of raw materials, machinery and equipment	3
3	Other business activities	2

(b) Revenue subject to CIT is the total revenue exclusive of VAT received by the foreign contractor or foreign sub-contractor, but inclusive of the costs paid by the Vietnamese entity on behalf of the foreign contractor or foreign sub-contractor (if any) and payable taxes. CIT rates serving the calculation of CIT imposed on taxable revenues vary subject to business lines. CIT will be calculated by multiplying the taxable revenues with the respective CIT rates as described in the below table:

No.	<i>Business lines</i>	<i>CIT rates as % of taxable turnover</i>
1	Trading: distribution, supply of commodities, raw materials, supplies, machinery and equipment; distribution, supply of commodities, raw materials, supplies, machinery and equipment associated with services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of commodities in accordance with Incoterms	1
2	Services, equipment lease, insurance, oil and gas drilling platform	5
	Particularly: – Casino, hotel and restaurant management services	10
	– Derivative securities services	2
3	Lease of airplane, airplane engine, airplane and sea vessel accessories	2
4	Construction with or without supply of materials, machinery or equipment	2

5	Other production, business activities; Transportation (including sea and air transportations)	2
6	Transfer of securities, certificates of deposit, offshore re-insurance, commission on re-insurance assignment	0.1
7	Loan interest	10
8	Income from royalties	10

Personal Income Tax

All foreigners having incomes in/ from Vietnam, regardless the length of time they live in Vietnam, are the payers of PIT. For resident individuals, their taxable incomes are incomes earned inside and outside the Vietnamese territory, regardless of where their incomes are paid. For non-resident individuals, their taxable incomes are incomes earned in Vietnam, regardless of where their incomes are paid.

With respect to whom being present in Vietnam for a period less than 183 days, calculated within one calendar year or within 12 consecutive months from the first date of his/her stay in Vietnam or without a regular residential location in Vietnam that is a residential location for which permanent residence has been registered or a property rented pursuant to a lease for a definite term for residential purposes (so called non-resident foreigners):

- (i) 1% to activities in the form of business in goods.
- (ii) 5% to activities in the form of business in services.
- (iii) 2% to activities in the form of production, construction, transportation and other business activities.
- (iv) 20% to income from salaries and wages.
- (v) 5% to income from capital investments.
- (vi) 0.1% to income from capital transfers, irrespective of whether the transfer was conducted in Vietnam or abroad.
- (vii) 2% to income from real property transfers.
- (viii) 5% to income in the form of royalties and to income from franchises exceeding VND 10 million/ contract.
- (ix) 10% to income from winnings, inheritance or gift

exceeding VND 10 milion/ occasion.

With respect to whom living in Vietnam over 183 days, calculated within one calendar year or within 12 consecutive months from the first date of his/her stay in Vietnam, or having a regular residential location in Vietnam (so called locally-resident foreigners), they will pay PIT according to the progressive tax tariff, with the maximum rate of up to 35% of their monthly income. In this case, resident individuals irrespective of whether they are foreigners or Vietnamese will be subject to the same tax scales:

<i>Tax Bracket</i>	<i>Portion of Annual Assessable Income (million VND)</i>	<i>Portion of Monthly Assessable Income (million VND)</i>	<i>Tax Rate (%)</i>
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35
<i>Assessable Income</i>			<i>Tax rates (%)</i>
(a)	Income from capital investments:		5
(b)	Income from royalties, franchises:		5
(c)	Income from winnings:		10
(d)	Income from inheritances, gifts:		10
(e)	Income from equity transfers where it is possible to fix the purchase price plus reasonable expenses of a real property transfer:		20
	Income from transfers of securities:		0.1
(f)	Income from real property transfers:		2

Resident individuals are entitled to reduction based on family circumstances (i.e. a sum of money deductible from pre-tax

income from business, salary or wage of a resident taxpayer), which is consisted of: Reduction of VND 9 million/ month (VND 108 million/ year) for taxpayers, and reduction of VND 3.6 million/ month for each dependent.

Labour Matters

Legislation

In replacement of the former Labour Code of 1994, the current Labour Code which was passed by the National Assembly on 18 June 2012 and took effect on 1 May 2013, currently serves as the principal legal base for all the labour matters in Vietnam. The Labour Code 2012 applies to both employee and employer including foreign organizations that employ local and foreign staff working on regular basis in Vietnam.

Since June 2012, a number of decrees, decisions, circulars, directions and other regulations have been issued from time to time, by the Government and various ministries and agencies, to replace those guiding for the implementation of the former Code and bring the provisions of the Labour Code 2012 into practice.

Recruitment

Formerly, foreign capital enterprises must recruit employees first from individuals recommended by the local labour supplier(s). Now, foreign capital enterprises can do direct recruitment.

Employees must be at least 15 years old. Employee who is a foreigner entering Vietnam to work must satisfy the following conditions:

- (i) The worker is capable of civil acts as prescribed by law;
- (ii) The worker's health is fit for working;
- (iii) The worker is a manager, chief executive officer, expert or technician;
- (iv) The worker is not a criminal or liable to criminal prosecution in accordance with the Vietnam laws and the foreign country's laws;

(v) The worker obtains a work permit issued by competent State authority of Vietnam, except for cases entitled to exemption from work permit.

Preference in employment should be given to Vietnamese citizens. However, if a Vietnamese person with appropriate qualifications is not found, foreign employees can be hired. The employer is responsible to determine the demand for foreign workers for every job position in which Vietnamese workers are incompetent and send reports to the Chairperson of the People's Committee of the province or centrally-run city where the planned working place of foreign workers is located in order to obtain the latter's approval for the recruitment of foreign worker for every job position.

It is worthy of note that according to Decree No.11/2016/ND-CP dated 3 February 2016 of the Government detailing the implementation of a number of articles of the Labour Code regarding foreign workers in Vietnam ("Decree 11"), the foreign workers are exempt from work permits in the following cases:

(i) Capital contributing member or owner of a limited liability company.

(ii) Member of the board of management of a joint stock company.

(iii) Head of a representative office or of a project of an international organization or non-governmental organization in Vietnam.

(iv) Entering Vietnam for a period under 3 months in order to offer services.

(v) Entering Vietnam for a period under 3 months in order to resolve an incident breakdown or technically or technologically complex situation arising and affecting, or with the risk of affecting production or business with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal.

(vi) A foreign lawyer issued with a certificate to practice law in Vietnam in accordance with the laws on lawyers.

(vii) In accordance with provisions of an international treaty of which Vietnam is a member.

(viii) A student studying in Vietnam is permitted to work in Vietnam, but the employer must provide 7 days' advance notice to the provincial-level Department of Labour, War Invalids and Social Affairs ("DOLISA").

(ix) The workers are internally reassigned in the companies which engage in 11 service industries in the Vietnam's WTO commitments on services, including: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation.

(x) The workers enter Vietnam to provide professional and technical advisory services or perform other tasks serving the research, construction, appraisal, assessment, management and execution of programs and projects funded by ODA according to the International Treaties on ODA between the competent authorities of Vietnam and other countries.

(xi) The workers are issued with the licenses for the practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs ("MOFA").

(xii) The workers are appointed by foreign agencies or organizations to teach or do research in international schools under the management of foreign diplomatic missions or international organizations in Vietnam or the workers are permitted to teach or do research in educational and training institutions in Vietnam by the Ministry of Education and Training ("MOET").

(xiii) The workers are volunteers who have obtained the certification of the foreign diplomatic missions or international organizations in Vietnam.

(xiv) The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and an accumulated working period of under 90 days per year.

(xv) The workers enter Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories in accordance with the law;

(xvi) Students who are studying in schools or training institutions in foreign countries execute their practicum at agencies, organizations or companies in Vietnam upon agreements;

(xvii) Relatives of members execute their functions in foreign missions in Vietnam upon the approval of the MOFA, unless otherwise stated in the international treaties to which Vietnam is a signatory.

(xviii) Workers are holders of official passports for working in state agencies, political organizations or socio –

political organizations.

(xix) Other cases decided by the Prime Minister at the request of the Ministry of Labour, War Invalids and Social Affairs ("MOLISA").

The employer shall request the DOLISA of the locality where the planned working place of foreign workers is located or the Management Board of IZs, EPZs, EZs and HTZs authorized by the DOLISA of the province or centrally-run city where the Board is located (collectively called "provincial-level State management authority on labour") to certify that such foreign workers are eligible for exemption from work permits at least 7 working days before the day on which they start to work, except for the cases stated in (iv), (v) and (xiv) above. Within 3 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall send a written certification to the employer.

While at least 15 working days before the day on which the foreign worker intends to start his employment, the employer shall submit the application for the work permit to the provincial-level State management authority on labour. Within 7 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall issue the work permit to the foreign worker. The duration of a work permit shall not exceed 2 years. After the foreign worker is issued with the work permit, the employer and the foreign worker shall sign a written labour contract in accordance with the Vietnam law before the intended working day of such foreign worker. Within 5 working days from the day on which the labor contract is signed, the employer shall send a copy of the signed labor contract to the provincial-level State management authority that issued such work permit.

Labour Contracts

A labour contract must be in writing and directly signed in 2 originals between the employee and the employer's legal representative, the employee shall keep 1 original and the employer shall keep 1 original, except for the temporary employment will last less than three months the parties may conclude verbal contracts.

If the worker is from 15 years up to under 18 years of age,

then the entering into the labour contract must obtain a consent from his/her legal representative.

A group of workers may authorize one of the workers in their group to enter into a written labour contract for a seasonal work or specific job and in this case, the labour contract has the same validity as if it was signed with each worker.

A labour contract must be in conformity with the Vietnamese laws and collective agreements (if any), with maximal two definitive term contracts to be first permitted, then indefinite term contract to be applied.

A labour contract must have main clauses relating to: Name and address of the enterprise or of the employer's lawful representative; Full name, date of birth, sex, residential address, and number of identity card or other legal document of the employee; Job and workplace; Term of the labour contract; Wage rate, method of and time of payment of wages, allowances and other additional payments; Regime for wage increases and promotion; Working hours and rest breaks; Personal protective equipment of the employee; Social and health insurances for the employee; Training and skill improvement for the employee.

When an employee does a job, which is directly related to business or technological secrets as defined by law, the employer has the right to a written agreement with the employee on contents and term of confidentiality of business secrets and of technology, of interests or benefits and on payment of compensation if the employee breaches such agreement.

Probationary agreements may be separate from or included in the labour contracts. The probationary length varies, and subject to the nature and complexity of assigned jobs; but there may only be probation on one occasion for one job, and the probationary period must not exceed:

- (i) 60 days for working in a position requiring high level specialized or technical expertise;
- (ii) 30 days for working in a position requiring intermediate level specialized or technical expertise or for technical workers and professional staff; and
- (iii) 6 working days for other work.

An employee working pursuant to a seasonal labour contract is not engaged in a probationary period of work.

Statutory Minimums

Normal working hours are limited to 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on an hourly or daily or weekly basis; if on a weekly basis, then normal working hours must not exceed 10 hours in one day and must not exceed 48 hours in one week. Working hours shall not exceed 6 hours in one day for workers who perform extremely heavy, toxic or dangerous work as stipulated in the list issued by the MOLISA after presiding over coordination with the MOH.

Working hours may be extended by mutual agreements, but total daily overtime shall not exceed 50% of the normal working hours in 01 days; in case of application of working regulation on weekly basis, the total normal working hours and the overtime hours shall not exceed 12 hours in a day, 12 hours in one day when working overtime on public holidays or weekly days off, and 30 hours in 01 months; and the total of not more than 200 hours in 01 year, except for some special cases stipulated by the Government for the overtime working but shall not be more than 300 hours in 01 years, provided that the respective provincial-level State management authority on labour has been notified thereof.

Employees who have worked in the enterprise for 12 months in full are entitled to have a fully-paid annual leave in accordance with the wage stated in labour contract, which shall be:

- (i) 12 working days for employees working in normal conditions,
- (ii) 14 working days for employees doing heavy, toxic or dangerous works, or those working in the places with harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH, and minor or handicapped labour, or
- (iii) 16 working days for employees doing extremely heavy, toxic or dangerous works, or those working in the places with specially harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH.

Female employees are entitled also to prenatal and postnatal leave of six months in which the maximum period of prenatal leave shall be 2 months, with an allowance funded by social insurance agency and equal to 100% of salary. If a female

employee gives birth to more than one child at the one time, she is entitled to an additional 1 month's leave for each child counted from the second child.

Salary rates must conform to the collective labour agreement (if any) and must not be less than the legally-regulated minimum regional wage rates in accordance with the new Decree No.1532/2016/ND-CP dated 14 November 2016 of the Government, stipulating region-based minimum wage levels for labourers working under labour contracts, which takes effect on 1 January 2017. According to which, there are currently four levels applicable to employees, which come down from VND3,750,000 (about US\$165) regarding enterprises, agencies and organizations operating in the inners and most of suburb of HCMC, the inners and the mains of suburb of Hanoi and Hai Phong, Bien Hoa City and some rural districts of Dong Nai Province, Thu Dau Mot City and some rural districts of Binh Duong Province, and Vung Tau City; VND3,320,000 (about US\$146) in Can Gio district of HCMC, the remaining of suburb of Hanoi and Hai Phong, the inner and suburb of Da Nang, and the inner of some smaller cities including Hai Duong, Hung Yen, Vinh Yen, Bac Ninh, Ha Long, Cam Pha, Uong Bi, Mong Cai, Thai Nguyen, Viet Tri, Lao Cai, Nam Dinh, Ninh Binh, Hue, Da Nang, Nha Trang, Cam Ranh, Da Lat, Bao Loc, Phan Thiet, Ba Ria, Tan An, My Tho, Can Tho, Rach Gia, Long Xuyen, Chau Doc, Ca Mau, and some towns including Phuc Yen, Tu Son, Long Khanh, Dong Xoai, Ha Tien, etc.; VND2,900,000 (about US\$127.2) in the other cities and towns, to VND2,580,000 (about US\$113.2) in the rest.

Collective Labour Agreement

Representatives of both employer and labour collective in a foreign-invested enterprise may negotiate and sign a collective agreement. The labour collective's representative at grassroots level is the executive committee of the enterprise's grass-roots trade union or of a direct superior trade union when the grassroots trade union is not yet established.

Contents of a collective labour agreement must not contrary to the laws and be more favourable for the employees than the provisions of the laws. A collective labour agreement shall have the validity depending on agreement between the employer and the labour collective's representative. In case where the

collective labour agreement does not state its effective date, such agreement shall take effect on the date of signing by the legal representative of enterprise or head of organization/agency and by the chairperson of grassroots trade union/the trade union at the directly superior level to the grassroots level, or by their authorized representative(s). A collective labour agreement shall only be signed if the negotiated content of such agreement is approved by more than fifty (50) per cent of the members of the labour collective. The employer has to notify all employees of the signed collective labour agreement and send a copy of the collective labour agreement to the provincial-level State management authority on labour within 10 days from the signing date. Within 15 days as from the date of receipt, relevant State management authority has the responsibility to review the contents of the collective labour agreement, and if finding that any content is contrary to the laws or the signer is not competent to contract:

(i) To request in writing the parties to the labour collective agreement, which is not yet effective, to negotiate the amendment and supplement to the agreement and send the agreement amended and supplemented as the result of the parties' negotiations to the provincial-level State management authority on labour; or

(ii) To request in writing the People's Court to declare the effective labour collective agreement null and void, and at the same time to notify both parties to the labour collective agreement thereof.

The term of the collective labour agreement is between one and three years. When an enterprise signs a collective agreement for the first time, the term of the collective labour agreement may be less than one year. Within 3 months prior to the expiry of the collective labour agreement, both parties may negotiate to extend the term of such agreement or sign a new collective labour agreement.

Internal Working Rules

Foreign-invested enterprises employing ten (10) or more employees must have their written internal working rules registered with provincial-level State management authority on labour. Internal working rules must include compulsory items such as working hours and rest breaks; rules and order in the

work places; occupational safety and hygiene in the work places; protection of assets and confidentiality of business secrets, technological secrets and intellectual property of the employer; conducts which are in breach of labour rules, and penalties imposed for those breaches and material responsibility for damage; etc.

Internal working rules must be notified to all employees and its main contents have to be displayed at necessary locations in the work places, and shall be the legal basis for employees to follow and for employer to apply disciplines in case of breaches by employees.

Social, Healthcare, Occupational Accidents & Diseases and Unemployment Insurances, and Trade Union Expense and Fee

The compulsory insurances have recently been merged into one system being managed by Social insurance agency. These insurances cover illness, pregnancy, retirement, death, occupational accidents and diseases, and unemployment.

Foreign-invested enterprises are required to comply with the social insurance scheme, at least with respect to Vietnamese employees. In general, employers must pay to the social insurance fund and occupational accidents & diseases fund, now 18% and Vietnamese employees (and foreign employees as from 1 January 2018) will make a payment of 8% of their monthly wages (including wages and salary allowances; wages, salary allowances, and other allowances & subsidies as from 1 January 2018).

With respect to health insurance, both sides of employer and employees (regardless of being Vietnamese or foreigners) have to pay to the health insurance fund, of which 3% of total wages are paid by employers and 1.5% of the monthly wages are paid by employees.

Unemployment insurance is effective from 1 January 2009, which requires 1% of total wages to be paid by the employer and 1% of monthly wage to be paid by the employee. Having benefit from this type of insurance, the employee shall not be beneficial in terms of time for calculation of the job loss allowance or severance allowance when the employment relation is terminated.

Trade Union Expense payable by the employer would be 2% of the total payroll of the Vietnamese employees, and Trade Union Fee payable by the Vietnamese employees who are trade union members would be 1% of the monthly salary.

Labour Disputes

It should be first noted that Vietnamese laws allow employees to strike works against employers. With some exceptions, attempts must be made to settle labour disputes through conciliation between the employer and employee held by labour conciliators.

For individual labour disputes, if the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, or if on expiry of the prescribed time-limit for conciliation the labour conciliator has not conducted a conciliation, either of the parties may refer the dispute to the competent court for final settlement.

For collective labour disputes:

(i) If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, the parties may refer the dispute to:

(a) Chairperson of the district-level People's Committee for resolution regarding collective labour disputes about rights;
or

(b) Labour Arbitration Council for resolution regarding collective labour disputes about benefits.

(ii) If on expiry of the prescribed time-limit for conciliation the Labour Conciliator has not conducted a conciliation, the parties may refer the dispute to the Chairperson of the district-level People's Committee for resolution, who shall be responsible to determine whether the dispute is one about rights or one about benefits, and then to directly resolve the dispute in the first case or to guide the parties to petition the Labour Arbitration Council to resolve the dispute in the second case.

(iii) In the event that the parties disagree with the decision of the Chairperson of the district-level People's Committee, or if such Chairperson has not resolved the dispute on expiry of the time-limit, then the parties may refer the dispute to the competent court for final settlement regarding collective labour disputes about rights. If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation prepared by the Labour Arbitration Council, then the labour collective has the right to conduct procedures in order to strike regarding collective labour disputes about benefits.

Resolution of Commercial Disputes

Background

Vietnamese laws emphasis the needs for parties to attempt to settle their disputes by conciliation and mediation. In practice, both the foreign and local parties are encouraged to seek the assistance of a third party (mediator or conciliator) to find out an amicable solution to any conflict.

If any attempts for conciliation and mediation are not effective, the parties in various circumstances refer the matters to various arbitral bodies, inside and outside Vietnam, they include:

(i) Commercial arbitration: Vietnamese arbitration or foreign arbitration, with arbitration place located inside or outside Vietnam; and

(ii) Economic court: Civil court and administrative handling court directly under district-level People's Court and Civil court, administrative court, economic court and labour court directly under provincial-level People's Court.

Details about each arbitral body are described hereunder.

Bodies resolving disputes in Vietnam

The existing system of bodies, which resolve disputes arising out of or in connection to legal relationship in commercial activities in Vietnam, is comprised of:

- (i) the commercial arbitrations, including ad-hoc arbitrations and arbitration centers ("CACs"), and
- (ii) the economic courts.

It is worthy of note that since the issuance of the Ordinance on Commercial Arbitration (which was no longer valid) on 25 February 2003 ("Ordinance"), no discrimination has been found between the former economic arbitration system established under Decree No.116/CP dated 5 September 1994 and Vietnam International Arbitration Center ("VIAC") affiliated to the Vietnam Chamber of Commerce and Industry. They are all commercial arbitration centers newly registered under the Ordinance, being non-governmental organizations and having mandate of judging all commercial disputes in general. Until Law on Commercial Arbitrations of 2010, Vietnamese commercial arbitrations become more opened with foreign arbitrators and more powerful with injunction relieves and court support.

They are operating under the national governance by the Ministry of Justice and relevant state agencies. To establish one, at least five founding arbitrators are required, who are Vietnamese nationals residing in Vietnam with appropriate qualifications (having full capacity for civil acts, graduate level, 5 years of experience or more, etc.).

Unless otherwise agreed by the parties, the arbitration procedures shall be in Vietnamese and the law governing arbitral proceedings shall be decided by the Arbitration Council. Arbitral awards are delivered by a majority vote. In the event voting majority is not reached, the arbitration award shall be delivered in the opinion of the President of the Arbitration Council Within 30 days from the date of an arbitral award, if either party does not agree on arbitral decision, that party can request the court for cancellation of

the arbitral award. The parties then can further forward the disputes to the court for settlement, unless otherwise agreed.

Bodies resolving disputes outside Vietnam

Parties to a dispute can submit their dispute to an international or foreign arbitration center to issue settlement award outside or inside Vietnam. This, however, may not always be a better solution than Vietnamese arbitration because of expensiveness, meanwhile the local enforcement is unlikely compared to arbitral awards made by Vietnamese arbitration although Vietnam has joined the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards and passed also the Ordinance on Recognition and Enforcement of Foreign Arbitral Awards in September 1995, which has been replaced by related regulations in the current Civil Proceedings Code adopted on 25 November 2015.

Enforcement

Under applicable regulations, if an award decided by economic court is not voluntarily respected, there are various procedures that can be used to enforce it, such as distraint of property. However, the procedures in practice, have not worked well because of unavailability of specific regulations. As a matter of fact, several regulations on enforcement of civil awards have been borrowed for use.

With respect to local arbitral awards, unlike in the past, the enforcement of the arbitral awards has been now identified quite clear and obviously improved in the Ordinance and then, Law respectively. If an arbitral award is not voluntarily respected by the losing party, after 30 days from the date of the arbitral award, the victorious can request the enforcement teams to force the implementation.

With respect to foreign arbitral awards and court verdicts, they can be applied for recognition and enforcement in Vietnam since the issuance of the two previous ordinances and a separately-dedicated part in the present Civil Proceedings Code, governing the recognition and enforcement of foreign arbitral awards and court verdicts. However, at the current time, such recognition is rare. A Vietnamese court will only consider the recognition and enforcement of foreign arbitration awards: (a) where such awards have been made in, or by arbitrators of, a country which is a party to a relevant

international treaty of which Vietnam is a participant or a signatory, or (b) on a reciprocal basis without the condition that Vietnam and the relevant country are a signatory or participant of a relevant international treaty.